

1 NICOLA T. HANNA
United States Attorney
2 BRANDON D. FOX
Assistant United States Attorney
3 Chief, Criminal Division
KAREN I. MEYER (Cal. Bar No. 220554)
4 Assistant United States Attorney
Violent and Organized Crime Section
5 1300 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-8559
7 Facsimile: (213) 894-3713
E-mail: kim.meyer@usdoj.gov

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9 Attorneys for Plaintiff
UNITED STATES OF AMERICA

10
11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,
15 v.
16 GABRIEL GONZALEZ,
17 Defendant.

No. CR 04-1189(A)-CAS

DECLARATIONS OF DR. TANISHA
HALL FILED IN SUPPORT OF UNITED
STATES' OPPOSITION TO DEFENDANT'S
UNEXHAUSTED MOTION TO REDUCE
SENTENCE PURSUANT TO 18 U.S.C.
§ 3582(C)(1)(A)

18
19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Karen I. Meyer,
22 hereby files the declarations of Dr. Tanisha Hall in support of the
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1 United States' Opposition to Defendant's Unexhausted Motion to Reduce
2 Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A).
3

4 Dated: June 24, 2020

Respectfully submitted,

5 NICOLA T. HANNA
United States Attorney

6 BRANDON D. FOX
7 Assistant United States Attorney
Chief, Criminal Division
8

9 /s/
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KAREN I. MEYER
Assistant United States Attorney

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

On May 20, 2020, the government filed its opposition to defendant's motion for compassionate release (CR 206). Included in that opposition was government counsel's declaration in which government counsel quoted at length from a declaration from Dr. Tanisha Hall, Associate Warden at FCC-Forrest City, Arkansas, filed in another case.

On June 4, 2020, defendant filed a motion seeking production of the Hall declaration in that other case (CR 209). On June 22, 2020, this Court granted defendant's motion, ordering the government to file the declaration with the Court and provide it to defendant by July 2, 2020.

Pursuant to the Court's order, the government is filing two declarations from Dr. Hall that were filed in two separate cases. While virtually identical, the government quoted from the Hall declaration filed in United States v. Earnest Gibson IV, CR 12-600 (S.D. Texas), because the version filed in the South Carolina case (United States v. Marcus Gibbs, CR 10-1104 (D. South Carolina)), appeared to be more in draft form. The government is filing both versions with the Court, and is providing both versions to defendant. The government has redacted from the Texas declaration personal identifying information of the inmate in that case.

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20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

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2 **UNITED STATES DISTRICT COURT**
3 **SOUTHERN DISTRICT OF TEXAS**

4 UNITED STATES OF AMERICA,

No. 4:12-CR-00600-002

5 v.
6 EARNEST GIBSON IV,
7 Defendant.

DECLARATION OF
DR. TANISHA HALL

1 I, Dr. Tanisha Hall, declare the following under 28 U.S.C. § 1746, and state that
2 under penalty of perjury the following is true and correct to the best of my knowledge
3 and belief:

4 **I. Personal Background**

5 1. I am currently employed by the Federal Bureau of Prisons (BOP) of the
6 United States Department of Justice, as an Associate Warden, at FCC Forrest City.

7 2. I started my career with the Bureau of Prisons as a Correctional Officer
8 at FPC Bryan in September 1994. In November 1995, I promoted to Correctional
9 Systems Officer at FPC Bryan, and Drug Treatment Specialist in December 1997. In
10 September 1999, I promoted to Case Manager at FPC Bryan, where I remained until
11 my selection as Reentry Affairs Coordinator at FDC Houston in July 2012. In
12 September 2014, I promoted to Unit Manager at FCI Bastrop, and Executive
13 Assistant and Camp Administrator at FCC Pollock in July 2016, where I remained
14 until my selection as Associate Warden at FCC Forrest City in December 2018.

15 **II. The BOP's Authority to Place Inmates on Home Confinement**

16 3. The BOP's statutory authority to transfer prisoners to home
17 confinement rests in 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541. The BOP's policy
18 and procedures regarding home confinement are outlined in BOP Program
19 Statement 7320.01, *Home Confinement* and BOP Operations Memorandum, *Home*
20 *Confinement under the First Step Act*, both of which are available on www.bop.gov via
21 the Resources tab. Both statutes set forth certain limitations with respect to the
22 BOP's transfer authority. See 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541.
23 However, pursuant to the Attorney General's directives in light of the COVID-19
24 pandemic, dated March 26, 2020, and April 3, 2020, *infra*, and given the surge in
25 positive cases at select sites, the BOP began immediately reviewing all inmates who
26 have COVID-19 risk factors, as described by the Centers for Disease Control and
27 Prevention (CDC), to determine which inmates are suitable for home confinement.

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1 Since the release of the Attorney General's original memorandum dated March 26,
2 2020, the BOP is prioritizing transfers to home confinement of all suitable inmates
3 as an appropriate response to the COVID-19 pandemic.

4 **III. The Attorney General's Memorandum for the Director of the Bureau of
5 Prisons, dated March 26, 2020**

6 4. On March 26, 2020, the Attorney General issued a Memorandum for
7 the Director of the Bureau of Prisons (the March 26, 2020 Memorandum) to ensure
8 that, in light of the COVID-19 pandemic, BOP utilizes home confinement, where
9 appropriate, to protect the health and safety of BOP personnel and people in BOP's
10 custody. Pursuant to the March 26, 2020 Memorandum, BOP is prioritizing the use
11 of its statutory authorities to grant home confinement for inmates seeking transfer
12 in connection with the ongoing COVID-19 pandemic. It was noted in the March
13 26, 2020 Memorandum that many inmates will be safer in BOP facilities where the
14 population is controlled and there is ready access to doctors and medical care. But
15 for some eligible inmates, home confinement might be more effective in protecting
16 their health.

17 5. In assessing whether home confinement should be granted pursuant to
18 the March 26, 2020 Memorandum, BOP considers the totality of circumstances for
19 each individual inmate, the statutory requirements for home confinement, and the
20 following non-exhaustive list of discretionary factors:

- 21 a. The age and vulnerability of the inmate to COVID-19, in accordance
22 with the CDC guidelines;
- 23 b. The security level of the facility currently holding the inmate, with
24 priority given to inmates residing in low and minimum security facilities;
- 25 c. The inmate's conduct in prison, with inmates who have engaged in
26 violent or gang-related activity in prison or who have incurred a BOP
27 violation within the last year not receiving priority treatment;

- d. The inmate's score under PATTERN (the Prisoner Assessment Tool Targeting Estimated Risk and Need),¹ with inmates who have anything above a minimum score not receiving priority treatment;
 - e. Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
 - f. The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home confinement. Other serious offenses weigh heavily against consideration for home confinement.

13 6. In addition to setting forth these factors, the March 26, 2020
14 Memorandum stated that before granting any inmate discretionary release, the BOP
15 Medical Director, or someone he designates, will, based on CDC guidance, make an
16 assessment of the inmate's risk factors for severe COVID-19 illness, risks of
17 COVID-19 at the inmate's prison facility, as well as the risk of COVID-19 at the
18 location in which the inmate seeks home confinement. The BOP will not grant home
19 confinement to inmates when doing so is likely to increase their risk of contracting
20 COVID-19. The BOP will grant home confinement only when it has determined --
21 based on the totality of circumstances for each individual inmate -- that transfer to
22 home confinement is likely not to increase the inmate's risk of contracting COVID-
23 19.

24 7. Moreover, the March 26, 2020 Memorandum noted that for the
25 protection of the public, any inmate to whom BOP grants home confinement is to
26 be placed in a mandatory 14-day quarantine before that inmate is discharged from a

¹ For more information on PATTERN, please visit www.bop.gov via Inmates/ First Step Act tab.

1 BOP facility to home confinement. Inmates transferred to home confinement under
2 this prioritized process are also subject to location monitoring devices and, where a
3 court order is entered, are subject to supervised release.

4 **IV. The CARES Act and the Attorney General's Memorandum for the
5 Director of the Bureau of Prisons, dated April 3, 2020**

6 8. The Coronavirus Aid, Relief, and Economic Security (CARES) Act,
7 Public Law No. 116-236 (enacted March 27, 2020), authorizes the Attorney General
8 to expand the cohort of inmates who can be considered for home confinement upon
9 his finding of emergency conditions which are materially affecting the function of
10 the BOP. On April 3, 2020, the Attorney General made that finding, and in a
11 Memorandum for the Director of the Bureau of Prisons (April 3, 2020
12 Memorandum), authorized the Director to immediately maximize appropriate
13 transfers to home confinement of all appropriate inmates held at BOP facilities where
14 the Director determines that COVID-19 is materially affecting operations.

15 9. The April 3, 2020 Memorandum specifically stated that the BOP must
16 move with dispatch in using home confinement, where appropriate, to move
17 vulnerable inmates out of FCI Oakdale, FCI Danbury, and FCI Elkton, and to give
18 priority to those institutions, and others similarly affected, as the BOP continues to
19 process the remaining inmates who are eligible for home confinement under pre-
20 CARES Act standards.

21 10. The April 3, 2020 Memorandum directed that the BOP give priority in
22 implementing the new standards to the most vulnerable inmates at the most affected
23 facilities and was explicit that the BOP should begin implementing this directive
24 immediately at the identified facilities and any other facilities at risk of similar
25 problems. The April 3, 2020 Memorandum stated that the review should include a
26 much broader pool of at-risk inmates—not only those who were eligible for transfer
27 prior to the Attorney General exercising his authority under the CARES Act.

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1 11. For inmates deemed suitable candidates for home confinement, the
2 April 3, 2020 Memorandum directed the BOP to immediately process these inmates
3 for transfer and then immediately transfer them following a 14-day quarantine at an
4 appropriate BOP facility. The April 3, 2020 Memorandum further authorized BOP
5 to, in appropriate cases, require that the inmate being transferred undergo his or her
6 14-day quarantine in the residence to which the inmate is being transferred rather
7 than in the BOP facility from which the inmate is being transferred. The assessment
8 of all inmates remains guided by the factors in the March 26, 2020 Memorandum.

9 12. The April 3, 2020 Memorandum also recognized that the BOP has
10 limited resources to monitor inmates on home confinement and that the U.S.
11 Probation Office is unable to monitor large number of inmates in the community,
12 and authorized the BOP to transfer inmates to home confinement even if electronic
13 monitoring is not available, so long as it determines in every instance that doing so is
14 appropriate and consistent with the obligation to protect public safety.

15 13. Lastly, the April 3, 2020 Memorandum stated that it is essential for the
16 BOP to continue making determinations for home confinement in a careful and
17 individualized way that remains faithful to the duty of protecting the public and law
18 enforcement officers.

19 **V. The BOP's Implementation of the March 26, 2020 and the April 3, 2020
20 Memoranda**

21 14. The BOP is devoting all available resources to executing the Attorney
22 General's directives, with such resources tailored and prioritized according to the
23 needs of individual institutions across the country. The BOP is assessing the inmate
24 population to determine which inmates would be appropriate for transfer under this
25 priority program. The BOP is then processing those inmates for transfer as
26 expeditiously as possible.

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1 15. The BOP is also frequently updating its public website to provide
2 information and responses to frequently asked questions regarding its response to
3 the COVID-19 pandemic, including providing information regarding its
4 implementation of the Attorney General's directives.

5 16. The BOP has increased home confinement by over 65.6% since March
6 2020, and is continuing to aggressively screen inmates for home confinement. Since
7 the March 26, 2020 Memorandum instructing the BOP to prioritize home
8 confinement as an appropriate response to the COVID-19 pandemic, the BOP has
9 placed an additional 1,871 inmates on home confinement. *See* www.bop.gov.

10 17. Inmates do not need to apply to be considered for home confinement.
11 BOP Case Management staff are urgently reviewing all inmates to determine which
12 ones meet the criteria established by the Attorney General. While all inmates are
13 being reviewed for suitability for home confinement, any inmate who believes he or
14 she is eligible may request to be referred to home confinement and provide a release
15 plan to his or her Case Manager.

16 18. It should be noted that for public safety reasons, in accordance with the
17 March 26, 2020 Memorandum, and to ensure BOP is deploying its limited resources
18 in the most effective manner, the BOP is currently assessing a number of factors to
19 ensure that an inmate is suitable for home confinement including, but not limited to,
20 reviewing the inmate's institutional discipline history for the last twelve months;
21 ensuring that the inmate has a verifiable release plan; verifying that the inmate's
22 primary offense is not violent, a sex offense, or terrorism related; and confirming the
23 inmate does not have a current detainer.

24 19. In addition, and in order to prioritize its limited resources, BOP has
25 generally prioritized for home confinement those inmates who have served a certain
26 portion of their sentences, or who have only a relatively short amount of time
27 remaining in those sentences. While these priority factors are subject to deviation in
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1 BOP's discretion in certain circumstances and are subject to revision as the situation
2 progresses, BOP is at this time prioritizing for consideration those inmates who
3 either (1) have served 50% or more of their sentences, or (2) have 18 months or less
4 remaining in their sentences and have served 25% or more of their sentences. As
5 BOP processes the inmates eligible for home confinement under these criteria and
6 learns more about the COVID-19 pandemic and its effect on BOP facilities, it is
7 assessing whether and how to otherwise prioritize consideration.

8 20. If the incarcerated individual does not qualify for home confinement
9 under BOP criteria, an inmate may be reviewed for placement in a Residential
10 Reentry Center and home confinement at a later stage in accordance with applicable
11 laws and BOP policies.

12 VI. Measures to Protect Inmate and Staff Safety

13 21. In response to the pandemic, BOP has taken significant measures to
14 protect the health of the inmates in its charge. These steps include, but are not
15 limited to the following:

- 16 a. Beginning April 13, 2020, BOP implemented Phase 6 of the Action Plan,
17 which currently governs operations. The current modified operations
18 plan requires that all inmates in every BOP institution be secured in their
19 assigned cells/quarters for a period of at least 14 days, in order to stop
20 any spread of the disease. Only limited group gathering is afforded, with
21 attention to social distancing to the extent possible, to facilitate
22 commissary, laundry, showers, telephone, and computer access. Further,
23 BOP has severely limited the movement of inmates and detainees
24 among its facilities. Though there will be exceptions for medical
25 treatment and similar exigencies, this step as well will limit transmissions.
- 26 b. All staff and inmates have been and will continue to be issued an
27 appropriate face covering and strongly encouraged to wear the face

1 covering when in public areas when social distancing cannot be
2 achieved.

- 3 c. All newly admitted inmates are screened for COVID-19 exposure risk
4 factors and symptoms, placed in quarantined for a full fourteen days,
5 and have their temperature taken daily. Any inmates displaying
6 symptoms are placed in isolation and tested for the COVID19 virus and
7 kept in isolation and treated until they test negative for COVID-19 or
8 are cleared by medical staff as meeting CDC criteria for release from
9 isolation. Asymptomatic inmates who were at risk of exposure to
10 COVID-19 are also quarantined and tested daily.
- 11 d. In addition, in areas with sustained community transmission and at
12 medical centers, all staff are screened for symptoms. Staff registering a
13 temperature of 100.4 degrees Fahrenheit or higher are barred from the
14 facility on that basis alone. A staff member with a stuffy or runny nose
15 can be placed on leave by a medical officer.
- 16 e. Contractor access to BOP facilities is restricted to only those performing
17 essential services (e.g. medical or mental health care, religious, etc.) or
18 those who perform necessary maintenance on essential systems. All
19 volunteer visits are suspended absent authorization by the Deputy
20 Director of BOP. Any contractor or volunteer who requires access will
21 be screened for symptoms and risk factors.
- 22 f. Social and legal visits were stopped as of March 13, 2020, and remain
23 suspended until at least May 18, 2020, to limit the number of people
24 entering the facility and interacting with inmates. In order to ensure that
25 familial relationships are maintained throughout this disruption, BOP
26 has increased detainees' telephone allowance to 500 minutes per month.
27 Tours of facilities are also suspended. Legal visits will be permitted on a
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1 case-by-case basis after the attorney has been screened for infection in
2 accordance with the screening protocols in place for prison staff,
3 contractors, and visitors.

4 g. Further details and updates of BOP's modified operations are available
5 to the public on the BOP website at a regularly updated resource page:
6 www.bop.gov/coronavirus/index.jsp.

7 **VII. Earnest Gibson [REDACTED]/FCI Forrest City Low**

8 22. Defendant is a [REDACTED] year old male, serving an aggregated 241 month
9 sentence, with a 3 year term of supervised release, for his convictions on Conspiracy
10 to Commit Health Fraud, Conspiracy to Defraud the U.S., Offering or Paying Health
11 Care Kickbacks, Aiding and Abetting, and Conspiracy to Commit Money Laundering.
12 [REDACTED]

13 [REDACTED] and was subsequently convicted in the Eastern
14 District of Arkansas for Possession of a Prohibited Object by a Prison Inmate
15 (Cellphone), for which he received a one month sentence consecutive to the sentence
16 he was already serving.

17 23. Defendant has a projected release date of [REDACTED]
18 [REDACTED]. He is classified as a [REDACTED] inmate.
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 24. FCI Forrest City Low is in compliance with BOP protocols and CDC
23 guidance regarding procedures to combat the COVID-19 pandemic outlined in the
24 attachments.

25 25. The institution is on modified operations and inmates are not permitted
26 to go to Recreation, Education, or Food Service. Att. 1. The inmate's meals are
27 delivered to the housing units, and any movements are controlled by one pod at a
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1 time in order to avoid cross contamination. Inmates are strongly advised to keep
2 social distancing. However, they do receive their commissary and are allowed to
3 spend \$150.00 every other week.

4 26. The staff are required to wear PPE equipment daily in order to protect
5 themselves from contracting the virus. In isolation areas they are in full PPE (gown,
6 goggles, mask, gloves), and in areas that are not affected by the virus they are required
7 to wear a mask and gloves.

8 27. Each inmate has been issued three cloth masks to wear and are issued a
9 hygiene kit each week with hand sanitizer, two additional bars of soap, razors and
10 toothpaste. Att. 2. Additionally, FCC Forrest City has foam soap on the wall for the
11 inmates to use that is filled up throughout the day and in the evening. Families have
12 never been able to mail in items to inmates under BOP policy, and this rule is even
13 more important now to avoid cross-contamination.

14 28. The Safety department provides bleach to all housing units every
15 morning and the counselor sprays down every bathroom continuously throughout the
16 day and the HALT chemical which is used daily to saturate the inmates cells and
17 cubicles to kill the virus, and the inmate orderlies walk around continuously saturating
18 the highly used areas such as computer tables, phones, and wiping down computer
19 keys. The Laundry staff have a schedule where they come to the units daily to pick
20 up the inmate's clothes to wash them at a 130 degrees temperature water to kill the
21 virus. The administration is constantly putting out information to the inmate
22 population to educate them on the virus. Currently, the CDC is here conducting a
23 study and testing inmates for the virus, Att. 3, but many are refusing to test. However,
24 those who have tested are properly being cared for and isolated from those inmates
25 that test negative.

26 29. FCC Forrest City is testing the pods that have the most positive cases,
27 and is isolating those inmates in the vocational area, which is set up like a hospital.
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1 Inmates waiting test results are isolated in the Chapel area pending results. Inmates
2 who test negative are housed in the Education area. Inmates in recovery are in the
3 Visiting Room and Recreation areas. All of these areas have televisions for the
4 inmates to watch and they receive a phone call three times per week.

5 30. The inmates in isolation (see ¶ 21.c above), those waiting test results and
6 those in recovery see the nursing staff daily. Because of the outstanding job of the
7 Health Services department FCC Forrest City currently has ninety-seven inmates who
8 have fully recovered from this virus, and no inmate deaths.

9 31. The CDC is on the compound testing inmates for the COVID19 virus
10 in an effort to assist the FCC Forrest City in identifying those highly affected areas in
11 the institution in effort to stop the spread of the virus by identifying and separating
12 those inmates infected with the virus. The CDC will be at FCC Forrest City for two
13 weeks or it could be longer, depending on the time it takes them to complete their
14 data collection.

15 **VIII. Compassionate Release / Reduction in Sentence Procedures**

16 32. The BOP lacks the authority to provide inmates with a reduction in
17 sentence through compassionate or “early release.” Rather, only an Article III
18 judge—specifically, the inmate’s sentencing judge—may authorize such a reduction
19 of an inmate’s federal sentence. However, on an inmate’s request, the Director of the
20 BOP may make a motion to an inmate’s sentencing court to reduce a term of
21 imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). The BOP
22 uses these statutory authorities in “extraordinary or compelling circumstances” which
23 could not reasonably have been foreseen by the court at the time of sentencing. This
24 process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction*
25 *In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*. (This BOP
26 program statement is available at www.bop.gov via the Resources tab).

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1 33. Additionally, the First Step Act specifies that an inmate may file a Motion
2 for Reduction of Sentence directly in the sentencing court after exhaustion of
3 administrative remedies, or 30 days from the date the warden receives such a request
4 from the inmate, whichever is earlier. *See* 18 U.S.C. § 3582(c)(1)(A).

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7 Executed on this ____ day of ____, 2020.

8

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10 Dr. Tanisha Hall
11 Associate Warden
12 Federal Bureau of Prisons
13 FCC Forrest City

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2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF SOUTH CAROLINA**

4 UNITED STATES OF AMERICA,

No. 2:10-CR-1104

5 v.
6 MARCUS GIBBS,

DECLARATION OF
DR. TANISHA HALL

7 Defendant.

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24 pandemic, dated March 26, 2020, and April 3, 2020, *infra*, and given the surge in
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19 each individual inmate, the statutory requirements for home confinement, and the
20 following non-exhaustive list of discretionary factors:

- 21 a. The age and vulnerability of the inmate to COVID-19, in accordance
22 with the CDC guidelines;
- 23 b. The security level of the facility currently holding the inmate, with
24 priority given to inmates residing in low and minimum security facilities;
- 25 c. The inmate's conduct in prison, with inmates who have engaged in
26 violent or gang-related activity in prison or who have incurred a BOP
27 violation within the last year not receiving priority treatment;

- d. The inmate's score under PATTERN (the Prisoner Assessment Tool Targeting Estimated Risk and Need),¹ with inmates who have anything above a minimum score not receiving priority treatment;
- e. Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
- f. The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home confinement. Other serious offenses weigh heavily against consideration for home confinement.

6. In addition to setting forth these factors, the March 26, 2020 Memorandum stated that before granting any inmate discretionary release, the BOP Medical Director, or someone he designates, will, based on CDC guidance, make an assessment of the inmate's risk factors for severe COVID-19 illness, risks of COVID-19 at the inmate's prison facility, as well as the risk of COVID-19 at the location in which the inmate seeks home confinement. The BOP will not grant home confinement to inmates when doing so is likely to increase their risk of contracting COVID-19. The BOP will grant home confinement only when it has determined -- based on the totality of circumstances for each individual inmate -- that transfer to home confinement is likely not to increase the inmate's risk of contracting COVID-19.

7. Moreover, the March 26, 2020 Memorandum noted that for the protection of the public, any inmate to whom BOP grants home confinement is to be placed in a mandatory 14-day quarantine before that inmate is discharged from a

¹ For more information on PATTERN, please visit www.bop.gov via Inmates/ First Step Act tab.

1 BOP facility to home confinement. Inmates transferred to home confinement under
2 this prioritized process are also subject to location monitoring devices and, where a
3 court order is entered, are subject to supervised release.

4 **IV. The CARES Act and the Attorney General's Memorandum for the
5 Director of the Bureau of Prisons, dated April 3, 2020**

6 8. The Coronavirus Aid, Relief, and Economic Security (CARES) Act,
7 Public Law No. 116-236 (enacted March 27, 2020), authorizes the Attorney General
8 to expand the cohort of inmates who can be considered for home confinement upon
9 his finding of emergency conditions which are materially affecting the function of
10 the BOP. On April 3, 2020, the Attorney General made that finding, and in a
11 Memorandum for the Director of the Bureau of Prisons (April 3, 2020
12 Memorandum), authorized the Director to immediately maximize appropriate
13 transfers to home confinement of all appropriate inmates held at BOP facilities where
14 the Director determines that COVID-19 is materially affecting operations.

15 9. The April 3, 2020 Memorandum specifically stated that the BOP must
16 move with dispatch in using home confinement, where appropriate, to move
17 vulnerable inmates out of FCI Oakdale, FCI Danbury, and FCI Elkton, and to give
18 priority to those institutions, and others similarly affected, as the BOP continues to
19 process the remaining inmates who are eligible for home confinement under pre-
20 CARES Act standards.

21 10. The April 3, 2020 Memorandum directed that the BOP give priority in
22 implementing the new standards to the most vulnerable inmates at the most affected
23 facilities and was explicit that the BOP should begin implementing this directive
24 immediately at the identified facilities and any other facilities at risk of similar
25 problems. The April 3, 2020 Memorandum stated that the review should include a
26 much broader pool of at-risk inmates—not only those who were eligible for transfer
27 prior to the Attorney General exercising his authority under the CARES Act.

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1 11. For inmates deemed suitable candidates for home confinement, the
2 April 3, 2020 Memorandum directed the BOP to immediately process these inmates
3 for transfer and then immediately transfer them following a 14-day quarantine at an
4 appropriate BOP facility. The April 3, 2020 Memorandum further authorized BOP
5 to, in appropriate cases, require that the inmate being transferred undergo his or her
6 14-day quarantine in the residence to which the inmate is being transferred rather
7 than in the BOP facility from which the inmate is being transferred. The assessment
8 of all inmates remains guided by the factors in the March 26, 2020 Memorandum.

9 12. The April 3, 2020 Memorandum also recognized that the BOP has
10 limited resources to monitor inmates on home confinement and that the U.S.
11 Probation Office is unable to monitor large number of inmates in the community,
12 and authorized the BOP to transfer inmates to home confinement even if electronic
13 monitoring is not available, so long as it determines in every instance that doing so is
14 appropriate and consistent with the obligation to protect public safety.

15 13. Lastly, the April 3, 2020 Memorandum stated that it is essential for the
16 BOP to continue making determinations for home confinement in a careful and
17 individualized way that remains faithful to the duty of protecting the public and law
18 enforcement officers.

19 **V. The BOP's Implementation of the March 26, 2020 and the April 3, 2020
20 Memoranda**

21 14. The BOP is devoting all available resources to executing the Attorney
22 General's directives, with such resources tailored and prioritized according to the
23 needs of individual institutions across the country. The BOP is assessing the inmate
24 population to determine which inmates would be appropriate for transfer under this
25 priority program. The BOP is then processing those inmates for transfer as
26 expeditiously as possible.

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1 15. The BOP is also frequently updating its public website to provide
2 information and responses to frequently asked questions regarding its response to
3 the COVID-19 pandemic, including providing information regarding its
4 implementation of the Attorney General's directives.

5 16. The BOP has increased home confinement by over 65.6% since March
6 2020, and is continuing to aggressively screen inmates for home confinement. Since
7 the March 26, 2020 Memorandum instructing the BOP to prioritize home
8 confinement as an appropriate response to the COVID-19 pandemic, the BOP has
9 placed an additional 1,871 inmates on home confinement. *See* www.bop.gov.

10 17. Inmates do not need to apply to be considered for home confinement.
11 BOP Case Management staff are urgently reviewing all inmates to determine which
12 ones meet the criteria established by the Attorney General. While all inmates are
13 being reviewed for suitability for home confinement, any inmate who believes he or
14 she is eligible may request to be referred to home confinement and provide a release
15 plan to his or her Case Manager.

16 18. It should be noted that for public safety reasons, in accordance with the
17 March 26, 2020 Memorandum, and to ensure BOP is deploying its limited resources
18 in the most effective manner, the BOP is currently assessing a number of factors to
19 ensure that an inmate is suitable for home confinement including, but not limited to,
20 reviewing the inmate's institutional discipline history for the last twelve months;
21 ensuring that the inmate has a verifiable release plan; verifying that the inmate's
22 primary offense is not violent, a sex offense, or terrorism related; and confirming the
23 inmate does not have a current detainer.

24 19. In addition, and in order to prioritize its limited resources, BOP has
25 generally prioritized for home confinement those inmates who have served a certain
26 portion of their sentences, or who have only a relatively short amount of time
27 remaining in those sentences. While these priority factors are subject to deviation in
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1 BOP's discretion in certain circumstances and are subject to revision as the situation
2 progresses, BOP is at this time prioritizing for consideration those inmates who
3 either (1) have served 50% or more of their sentences, or (2) have 18 months or less
4 remaining in their sentences and have served 25% or more of their sentences. As
5 BOP processes the inmates eligible for home confinement under these criteria and
6 learns more about the COVID-19 pandemic and its effect on BOP facilities, it is
7 assessing whether and how to otherwise prioritize consideration.

8 20. If the incarcerated individual does not qualify for home confinement
9 under BOP criteria, an inmate may be reviewed for placement in a Residential
10 Reentry Center and home confinement at a later stage in accordance with applicable
11 laws and BOP policies.

12 VI. Measures to Protect Inmate and Staff Safety

13 21. In response to the pandemic, BOP has taken significant measures to
14 protect the health of the inmates in its charge. These steps include, but are not
15 limited to the following:

- 16 a. Beginning April 13, 2020, BOP implemented Phase 6 of the Action Plan,
17 which currently governs operations. The current modified operations
18 plan requires that all inmates in every BOP institution be secured in their
19 assigned cells/quarters for a period of at least 14 days, in order to stop
20 any spread of the disease. Only limited group gathering is afforded, with
21 attention to social distancing to the extent possible, to facilitate
22 commissary, laundry, showers, telephone, and computer access. Further,
23 BOP has severely limited the movement of inmates and detainees
24 among its facilities. Though there will be exceptions for medical
25 treatment and similar exigencies, this step as well will limit transmissions.
- 26 b. All staff and inmates have been and will continue to be issued an
27 appropriate face covering and strongly encouraged to wear the face

1 covering when in public areas when social distancing cannot be
2 achieved.

- 3 c. Every newly admitted inmate is screened for COVID-19 exposure risk
4 factors and symptoms. Newly admitted asymptomatic inmates with risk
5 of exposure are placed in quarantine and are tested daily. Newly admitted
6 symptomatic inmates are placed in isolation until they test negative for
7 COVID-19 or are cleared by medical staff as meeting CDC criteria for
8 release from isolation.
- 9 d. Inmates who are already incarcerated and who begin to show symptoms
10 [are put into isolation and tested. If they test positive, they are treated
11 and kept in isolation until they have recovered and are testing negative.
12 Inmates who had exposure to [symptomatic inmates/inmates who test
13 positive] are screened daily for symptoms and tested]. In addition, in
14 areas with sustained community transmission and at medical centers, all
15 staff are screened for symptoms. Staff registering a temperature of 100.4
16 degrees Fahrenheit or higher are barred from the facility on that basis
17 alone. A staff member with a stuffy or runny nose can be placed on leave
18 by a medical officer.
- 19 e. Contractor access to BOP facilities is restricted to only those performing
20 essential services (e.g. medical or mental health care, religious, etc.) or
21 those who perform necessary maintenance on essential systems. All
22 volunteer visits are suspended absent authorization by the Deputy
23 Director of BOP. Any contractor or volunteer who requires access will
24 be screened for symptoms and risk factors.
- 25 f. Social and legal visits were stopped as of March 13, 2020, and remain
26 suspended until at least May 18, 2020, to limit the number of people
27 entering the facility and interacting with inmates. In order to ensure that

1 familial relationships are maintained throughout this disruption, BOP
2 has increased detainees' telephone allowance to 500 minutes per month.
3 Tours of facilities are also suspended. Legal visits will be permitted on a
4 case-by-case basis after the attorney has been screened for infection in
5 accordance with the screening protocols in place for prison staff,
6 contractors, and visitors.

- 7 g. Further details and updates of BOP's modified operations are available
8 to the public on the BOP website at a regularly updated resource page:
9 www.bop.gov/coronavirus/index.jsp.

10 **VII. FCI Forrest City Low**

11 22. FCI Forrest City Low is in compliance with BOP protocols and CDC
12 guidance regarding procedures to combat the COVID-19 pandemic outlined in the
13 attachments.

14 23. The institution is on modified operations and inmates are not permitted
15 to go to Recreation, Education, or Food Service. Att. 1. The inmate's meals are
16 delivered to the housing units, and any movements are controlled by one pod at a
17 time in order to avoid cross contamination. Inmates are strongly advised to keep
18 social distancing. [However, they do receive their commissary and are allowed to
19 spend \$150.00 every three weeks due to social distancing and the number of inmates
20 allowed at the Commissary at one time. Additionally, the commissary is also working
21 to ensure the store has adequate stock which ensures all inmates have the opportunity
22 to purchase the same items without running out.]

23 24. The staff are required to wear PPE equipment daily in order to protect
24 themselves from contracting the virus. In isolation areas they are in full PPE (gown,
25 goggles, mask, gloves), and in areas that are not affected by the virus they are required
26 to wear a mask and gloves.

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1 25. Each inmate has been issued three cloth masks to wear and are issued a
2 hygiene kit each week with hand sanitizer, two additional bars of soap, razors and
3 toothpaste. Att. 2. Additionally, FCC Forrest City has foam soap on the wall for the
4 inmates to use that is filled up throughout the day and in the evening. Families have
5 never been able to mail in items to inmates under BOP policy, and this rule is even
6 more important now to avoid cross-contamination.

7 26. The Safety department provides bleach to all housing units every
8 morning and the counselor sprays down every bathroom continuously throughout the
9 day and the HALT chemical which is used daily to saturate the inmates cells and
10 cubicles to kill the virus, and the inmate orderlies walk around continuously saturating
11 the highly used areas such as computer tables, phones, and wiping down computer
12 keys. The Laundry staff have a schedule where they come to the units daily to pick
13 up the inmate's clothes to wash them at a 150 degrees temperature water to kill the
14 virus. [Is the laundry policy daily or weekly?] The administration is constantly putting
15 out information to the inmate population to educate them on the virus. Currently,
16 the CDC is here conducting a study and testing inmates for the virus, Att. 3, but many
17 are refusing to test. However, those who have tested are properly being cared for and
18 isolated from those inmates that test negative.

19 27. FCC Forrest City is testing the pods that have the most positive cases,
20 and is isolating those inmates in the vocational area, which is set up like a hospital.
21 Inmates waiting test results are isolated in the Chapel area pending results. Inmates
22 who test negative are housed in the Education area. Inmates in recovery are in the
23 Visiting Room and Recreation areas. All of these areas have televisions for the
24 inmates to watch and they receive a phone call three times per week.

25 28. The inmates in isolation (see ¶ 21.c above), those waiting test results and
26 those in recovery see the nursing staff daily. Because of the outstanding job of the
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1 Health Services department, Forrest City FCI Low currently has 110 inmates who
2 have fully recovered from this virus, and no inmate deaths.

3 29. The CDC is on the compound testing inmates for the COVID19 virus
4 in an effort to assist the FCC Forrest City in identifying those highly affected areas in
5 the institution in effort to stop the spread of the virus by identifying and separating
6 those inmates infected with the virus. The CDC will be at FCC Forrest City for at
7 least another two weeks as FCC Forrest City is testing all the inmates at the Low
8 Component , it depends on the time it takes them to complete their data collection.

9 **VIII. Compassionate Release / Reduction in Sentence Procedures**

10 30. The BOP lacks the authority to provide inmates with a reduction in
11 sentence through compassionate or “early release.” Rather, only an Article III
12 judge—specifically, the inmate’s sentencing judge—may authorize such a reduction
13 of an inmate’s federal sentence. However, on an inmate’s request, the Director of the
14 BOP may make a motion to an inmate’s sentencing court to reduce a term of
15 imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). The BOP
16 uses these statutory authorities in “extraordinary or compelling circumstances” which
17 could not reasonably have been foreseen by the court at the time of sentencing. This
18 process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction*
19 *In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*. (This BOP
20 program statement is available at www.bop.gov via the Resources tab).

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1 31. Additionally, the First Step Act specifies that an inmate may file a Motion
2 for Reduction of Sentence directly in the sentencing court after exhaustion of
3 administrative remedies, or 30 days from the date the warden receives such a request
4 from the inmate, whichever is earlier. *See* 18 U.S.C. § 3582(c)(1)(A).

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7 Executed on this 12th day of May, 2020.

8
9 Tanisha Hall, PhD

10 Dr. Tanisha Hall
11 Associate Warden
12 Federal Bureau of Prisons
FCC Forrest City

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